IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 387 of 2003()

SC.123/2000 of ADDL. DIST. & SESSIONS JUDGE, MANJERI

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APPELLANT: ACCUSED:

BALAKRISHNAN, S/O.PAIKKATTU UNNIKHARU,
MOONNIYUR AMSOM DESOM, THIRURANGADI TALUK,
VELLIMUKK P.O.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS:

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1. THE EXCISE CIRCLE INSPECTOR,
THIRURANGADI.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Crl. Appeal No.387 of 2003(A)

Dated this the 14th February, 2007.

J U D G M E N T

The accused in Sessions Case No.123/2000 on the file of the Additional Sessions Court (Adhoc) Fast Track Court-I, Manjeri, is the appellant. He was found guilty of the offence punishable under Section 55(a) of the Abkari Act, in short 'the Act'. Therefore, the accused was convicted and sentenced thereunder, to undergo rigorous imprisonment for three years and pay a fine of Rupees One Lakh, or in default, to undergo simple imprisonment for two years. The same is under challenge through this appeal.

2. The facts of the case are that, on 04/03/1998, PW.1, the Excise Circle Inspector, Tirurangadi, was conducting patrol duty along with PW.2, the Preventive Officer and other guards. The appellant was found carrying MO.3 bag. On suspicion, the appellant was stopped and searched. MO.3 was found containing two bottles of Shivas fine brandy, each bottle containing 375 ml and, 15 bottles of Western XXX rum, each bottle of 180 ml capacity. PW.1 separated one

bottle of 375 ml capacity and another bottle of 180 ml and, on smelling and testing, found the same to be brandy as well as rum respectively. The entire bottles contained the seal of Bevarages Corporation. It was in excess of the permitted quantity of 1.5 litres. Therefore, Ext.P1 seizure mahazar was prepared, seizing the entire contraband. The appellant, along with the contraband, had been handed over to PW.4, the Range Inspector, who prepared Ext.P2, occurrence report. PW.2 supported the evidence of PW.1. PW.3, an independent witness, who attested Ext.P1 seizure mahazar, turned hostile to the prosecution. The learned Sessions Judge found the accused guilty, accepting the evidence of PWs.1, 2 and 4, together with Ext.P5 chemical analysis report to the effect that both the bottles of 180 ml and 375 ml samples, were liquor, containing 42.06% by volume of ethyl alcohol. Hence, the appellant was convicted and sentenced, as stated above.

3. The learned counsel appearing for the appellant submits that the permitted quantity, at the relevant time of occurrence was 1.5 litres. The prosecution has to establish that all the bottles seized from the possession of the appellant contained liquor, as per the

definition of Section 3(10) of the Act, and it was in excess of the permitted quantity of 1.5 litres on the date of occurrence.

4. The case of the prosecution, as put forward and available on record, is that, though two bottles of 375 ml Shivas fine brandy and 15 bottles of Western XXX rum of 180 ml capacity each, were seized under Ext.P1, only one bottle of 375 ml and another bottle of 180 ml alone were taken as samples and sent to the Chemical Examination Laboratory, Kozhikode, for analysis and report. Ext.P5, the chemical analysis report, also reveal that, out of the 17 bottles, only two bottles, as stated above, had been tested and proved that those bottles contained liquor, as defined under Section 3(10) of the Act. The total quantity established is (375 ml plus 180 ml) 555 ml. Whereas, the permitted quantity is 1.5 litres.

5. Punishment prescribed under the Act is very rigour. Therefore, the prosecution cannot, in a half hearted manner, prosecute a case under the Act. The mere seizure of liquor bottles with the similar sticker of the brand, pasted on the bottles, will not enable the prosecuting authority or the court to accept that the entire

bottles seized, even without chemical analysis, as liquor, similar to that of the sample items sent for chemical analysis and report obtained. In the case at hand, the prosecution established 555 ml of liquor proved to have been possessed by the appellant, and, there is no material or evidence on record to show that the other 15 bottles, 1 bottle of 375 ml and 14 bottles of 180 ml, are also liquor of the brand mentioned in Ext.P1, under Section 3(10) of the Act. This is the law laid down in **Krishnankutty vs.State of Kerala** [2005(3) KLT 568]. In such circumstances, I hold that the prosecution has failed to establish a case under Section 55(a) of the Act.

6. Therefore, I set aside the impugned judgment, convicting and sentencing the accused, as above. The appellant is set at liberty forthwith cancelling his bail bond.

The appeal is allowed as above.

J.M. JAMES,
JUDGE.

ms

J.M. JAMES, J.

Crl.Appeal No. 387 of 2003 (A)

JUDGMENT

Dated: 14th February, 2007.